



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2022-0740; FRL-10172-01-R10]

#### Air Plan Approval; OR; Updates to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the regulatory materials incorporated by reference into the Oregon State Implementation Plan (SIP). The regulations addressed in this action were previously submitted by the Oregon Department of Environmental Quality (ODEQ) and approved by the EPA in prior rulemakings. In this action, the EPA is also notifying the public of corrections to typographical errors, and minor formatting changes to the incorporation by reference tables. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration and the EPA Regional Office.

**DATES:** This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** SIP materials which are incorporated by reference into the Code of Federal Regulations (CFR) at 40 CFR part 52 are available for inspection at the following locations: online at [www.regulations.gov](https://www.regulations.gov) in the docket for this action, by appointment at the EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, and by appointment at the National Archives and Records Administration (NARA). For information on the availability of this material at the EPA Regional Office, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. For information on the availability of this material at NARA, NARA, email

fr.inspection@nara.gov, or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

**FOR FURTHER INFORMATION CONTACT:** Christi Duboiski, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, (360) 753-9081, or [duboiski.christi@epa.gov](mailto:duboiski.christi@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The SIP is a living document revised by the State as necessary to address its unique air pollution problems in a manner consistent with requirements of section 110 of the Clean Air Act (CAA), 42 U.S.C. 7410. Therefore, from time to time, the EPA must take action on SIP revisions containing new and/or revised regulations, approving and incorporating them by reference into the SIP. On May 22, 1997, the EPA revised the procedures for incorporating by reference federally approved SIP provisions, as a result of consultations between the EPA and the Office of the Federal Register (OFR) (62 FR 27968). The description of the revised SIP document, IBR procedures and “Identification of plan” format is discussed in further detail in the May 22, 1997, *Federal Register* document. On December 10, 2013, the EPA published a *Federal Register* document beginning the new IBR procedure for Oregon (78 FR 74012). The EPA subsequently published an update to the IBR materials for Oregon on April 10, 2019 (84 FR 14272). Since then, the EPA has approved and incorporated by reference several provisions of the Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), Lane Regional Clean Air Protection Agency (LRAPA) rules, and City and County Ordinances into the Oregon SIP. The following *Federal Register* documents contain the provisions that EPA approved and incorporated by reference: 84 FR 26347, June 6, 2019; 84 FR 58324, October 31, 2019; 84 FR 58327, October 31, 2019; 85 FR 35198, June 9, 2020; 86 FR 27976, May 25, 2021; 86 FR 43954, August 11, 2021; 87 FR 29046, May 12, 2022; 87

FR 41256, July 12, 2022; 87 FR 51262, August 22, 2022; and 87 FR 51265, August 22, 2022.

## **II. EPA Action**

In this action, the EPA is announcing the update to the Oregon materials approved and incorporated by reference into the Oregon SIP at 40 CFR 52.1970 (c) as of August 31, 2022. The EPA is also correcting minor typographical errors, including correcting the federal citation for the June 9, 2020 approval of OAR 340-236-0010 Definitions (definitions for emission standards for specific industries) from "85 FR 33198" to "85 FR 35198"; correcting typographical errors to entry OAR 340-256-0330 to reflect corrected information and finally correcting Table 4, footnote 1 to replace the word "Titles" with the word "Title". Lastly, in subsection 52.1970 (e), the EPA is revising the heading for Table 5 to better reflect the content of the table.

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA), which, upon finding “good cause,” authorizes agencies to dispense with public participation, and section 553(d)(3), which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies provisions, which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

## **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is updating its

compilation of State and local rules included in the Oregon SIP by finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Oregon and federally approved prior to August 31, 2022. These include new and revised provisions as contained in the *Federal Register* documents listed in section I of this preamble. Lastly, the EPA is also correcting typographical errors in 52.1970(c) as described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub.

Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Alaska regulations described in sections I and II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

The EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Oregon SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for Oregon.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 13, 2022

Casey Sixkiller,  
*Regional Administrator, Region 10.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart MM—Oregon**

2. In § 52.1970:

a. Revise paragraph (b);

b. In paragraph (c):

i. Amend Table 2, by revising the entry for “236-0010 Definitions”;

ii. Amend Table 2, by revising the entry for “256-0330 Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program”;

iii. Amend Table 4, by revising Footnote “1”; and

c. In paragraph (e), revise the heading for Table 5.

The revisions read as follows:

#### **§ 52.1970 Identification of plan.**

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approval date prior to August 31, 2022, was approved for incorporation by reference by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notice of any change in the material will be published in the *Federal Register*. Entries in paragraphs (c) and (d) of this section, with the EPA approval dates on or after August 31, 2022, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 10 certifies that the rules and regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of August 31, 2022.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office at 1200 Sixth Ave, Suite 155, Seattle, WA 98101; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(c) \* \* \*

**Table 2 - EPA Approved Oregon Administrative Rules (OAR)<sup>1</sup>**

State citation	Title/subject	State effective date	EPA approval date	Explanations
* * * * *				
236-0010	Definitions	7/19/2019	6/9/2020, 85 FR 35198	
* * * * *				
256-0330	Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program	10/14/1999	11/22/2004; 69 FR 67819	
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**Table 4 - EPA Approved Lane Regional Air Protection Agency (LRAPA) Rules for Lane County, Oregon<sup>1</sup>**

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<sup>1</sup> The EPA approves the requirements in Table 4 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.



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(e) \* \* \*

**Table 5 - State of Oregon Air Quality Control Program – Nonregulatory Provisions  
and Quasi-Regulatory Measures**

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[FR Doc. 2022-27490 Filed: 12/19/2022 8:45 am; Publication Date: 12/20/2022]